

PATENT

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/kurt l grossman/ April 5, 2007
Kurt L. Grossman, Reg. No. 29,799 Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/713,917
Filed: April 8, 2003
Group Art Unit: 3763
Examiner: Laura Bouchelle
Applicant: Joseph P. McGurk
Title: **SAFETY NEEDLE AND CATHETER ASSEMBLY**
Attorney Docket: MDXVA-21US
Confirmation No.: 4436

Cincinnati, Ohio 45202

April 5, 2007

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Application for Patent Term Adjustment (37 CFR 1.705)

In response to the Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) mailed February 20, 2007 ("the Determination"), and prior to submission of the Issue Fee (which is being submitted concurrently herewith), Applicant hereby applies for an adjustment thereof to **REDUCE** the allotted Patent Term Adjustment ("PTA") by 345 days from the 611 days set forth in the Determination, to **266** days. The reasons for this Application are:

1. The Determination set out that the Office calculated the PTA as being 611 days.

2. The above-captioned application was originally filed April 8, 2003 as a Provisional Application under 35 U.S.C. 111(b). This date will be referred to as "the filing date".

3. On March 18, 2004, a request was filed to convert the provisional filing to a regular utility filing. This date will be referred to as "the conversion date".

4. A first Official Action was mailed February 9, 2006, which is more than fourteen months after the filing date. The mailing date of the Official Action will be referred to as "the Action date".

5. The Office determined that the PTA should be 611 days. A review of the PAIR database reveals that the 611 days is based on the date that was 14 months after the filing date until the Action date.

6. Under 37 CFR 1.704(c)(5), any increase in PTA in a case that was originally filed as a provisional application and later converted (as occurred here) is to be reduced by the difference between the filing date and the conversion date. That apparently did not happen in this case.

7. The days between the filing date and the conversion date in this case is 345 days.

8. As a consequence of the above, the 611 day PTA in the Determination is submitted to be in error as it was not reduced by 345 days.

9. After reduction from 611 days, by the amount of 345 days, it is submitted that the PTA should be 266 days based on the above as calculated below:

<u>Item</u>	<u>Adjustment</u>
Increase under 37 CFR 1.702(a)(1):	+611 Days
Decrease under 37 CFR 1.704 (c)(5):	<u>-345 Days</u>
Total PTA	+266 Days

10. The above-captioned application is not subject to a Terminal Disclaimer.

The fee set forth in 37 CFR 1.18(e) is being submitted concurrently herewith. It is respectfully submitted that the adjustment requested herein came about by the failure of the Office to follow its own regulations in treating the conversion of the application from a provisional to a non-provisional application, such that a fee should not have to be incurred to correct that Office error. Refund of the fee is thus earnestly solicited. Should any fees or surcharges be deemed necessary, or any credits due, the Office Examiner is authorized to charge fees or credit any overpayment to Deposit Account No. 23-3000.

It is submitted that the foregoing is in full compliance with 37 CFR 1.705 for adjustment in the PTA and thus it is requested that the patent, when issued, reflect a PTA of 266 days, rather than 611 days (plus any additional PTA for delays in issuing the patent after payment of the Issue Fee, should any such delays occur). The Office is invited to telephone undersigned counsel with any questions or issues.

Respectfully submitted,
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